(4.) That the conditions of the policy did not preclude a recovery for unintentional death from poison administered by a physician in good faith. *Dezell* v. *Fidelity & Casualty Co.* (1903), — Mo. —, 75 S. W. Rep. 1102.

1. Two judges dissent from the first holding. The dissenting opinion is ingenious and claims to prove with "mathematical" certainty that by denying that the policy covered the loss the defendant waived the defense of want of notice, notwithstanding that defense was expressly pleaded. But the majority opinion states that no courts have gone so far as to say that the insurer has no right to make such defense although he may have done nothing to induce the insured to refrain from making proof of loss, or nothing to indicate an intention to waive his right. No cases directly in point are cited in either opinion, and probably none exist. But the reasoning of the majority seems conclusive. The opinion is based on *Armstrong* v. *Agricultural Ins. Co.*, 130 N. Y. 560, 29 N. E. Rep. 991.

See also on this point *Fitchpatrick* v. *Hawkeye Ins.Co.*, 53 Iowa, 335, 5 N. W. Rep. 151; *Hicks* v. *British American Assurance Co.*. 162 N. Y. 284, 56 N. E. Rep., 743, 48 L. R. A. 424.

2. Such answers are condemned by POMEROY, CODE REMEDIES, Secs. 633-636, and are criticised by most text writers. See BLISS ON CODE PLEADING, Sec. 331, and MAXWELL CODE PLEADING, pp. 388-390. Such an answer has been held good in New York where the parts admitted are specific and clear. *Griffin* v. *Long Is. R. Co.* 101 N. Y. 348, 4 N. E. Rep. 740. *Contra*, see *Thierry* v. *Crawford*, 33 Hun. 366. Such answers have been held good also in the following decisions: *Childers* v. *First Nat'l Bank*, 147 Ind. 430, 46 N. E. Rep., 825; *Hintrager* v. *Richter*, 85 Iowa. 222, 52 N. W. 188; *Kingsley* v. *Gilman*, 12 Minn. 515; *Matteson* v. *Ellsworth*, 28 Wis. 254; *Denver* v. *Spokane Falls*, 7 Wash. 226, 34 Pac. Rep. 926. In several of these cases it is held that the denial will be made more specific on motion. On the other hand such an answer has been held bad in the following decisions: *Guynn* v. *McCauley*, 32 Ark. 97; *Levinson* v. *Schwartz*, 22 Cal. 230; *Evans* v. *Evans*, 93 Ky. 510, 20 S. W. Rep. 605.

3. This decision goes beyond any of those cited and it seems reasonable that total lack of notice and proof would, as a matter of law, prevent a recovery. *Quinlan* v. *P. & W. Ins. Co.*, 133 N. Y. 356, 31 N. E. Rep. 31, 28 Am. St. R. 645, If the defendant in this case had pleaded the limitation of the time for instituting legal proceedings the holding would probably have been different. In addition to cases cited in the opinion see *Insurance Co.* v. *Scammon*, 100 Ill. 645; *Ermentraut* v. *Girard Ins. Co.*, 63 Minn. 305. 65 N. W. Rep. 635, 30 L. R. A. 346; *Matthews* v. *Am. Cent. Ins. Co.*, 154 N. Y. 449, 48 N. E. R. 751; *Foster* v. *Fidelity & Casualty Co.*, 99 Wis. 447, 75 N. W. Rep. 69; *Griem* v. *Fidelity & Casualty Co.*, 99 Wis. 530, 75 N. W. Rep. 67.

4. This holding seems correct on reason and weight of authority. But the question is not free from difficulty. Other cases on the subject are: *Fidelity & Casualty Co.* v *Loewenstein*, 97 Fed. 17, 46 L. R. A. 450; *Kasten* v. *Interstate Casualty Co.*, 99 Wis. 73, 74 N. W. Rep. 534.

As to what constitutes an accident, see note to *Fidelity Casualty Co.* v. *Johnson*, 72 Miss. 333, 17 So. Rep. 2, 30 L. R. A. 206.

IRRIGATION—INTERSTATE STREAMS—PRIOR APPROPRIATION—JURISDICTION OF STATE COURTS.—The plaintiffs in this case claim right to water through the same ditch having its headgate in Wyoming, although part of the plaintiffs are located and use the water in Montana. They seek to restrain

the defendants who take water by later appropriation, part by a ditch in Wyoming and part by a ditch having its headgate in Montana, but conveying the water to Wyoming before it is used. The stream rises in Montana and flows into Wyoming. The prior appropriation of the plaintiffs is admitted, but the right of those located in Montana to the water appropriated in Wyoming, as well as the jurisdiction of the court over the ditch having its headgate in Montana, are denied. *Held*, that the plaintiffs are entitled to relief. *Willey* v. *Decker* (1903), — Wyo. — 73 Pac. Rep. 210.

There are very few decisions in the books as to the questions arising in regard to interstate streams. The court cites the cases of *Perkins County* v. *Graff*, 114 Fed. Rep. 441, 52 C. C. A. 243; *Howell* v. *Johnson*, 89 Fed. Rep. 556 and *Conant* v. *Deep Creek Co.*, 23 Utah 627, 66 Pac. Rep. 188. None of these involves the same points as the case under discussion, but the general tendency would seem to be towards the rules laid down in this case. In the rapidly extending field of irrigation in the west, questions as to rights of appropriators from interstate streams are sure to arise and the rules here laid down, seemed destined to aid in determining such questions. The court after disposing of the question of riparian rights as inapplicable where the theory of appropriation and diversion obtains, holds that in the absence of statutory provisions, owners of land in Montana may, by joining with owners of land in Wyoming in the construction of a ditch, acquire a legal right, by prior appropriation to water of a stream having its source in that state and flowing thence into Wyoming; and that such rights may be protected in the courts of Wyoming. Moreover, the courts of Wyoming have jurisdiction to restrain a party from diverting water in Montana, carrying it by ditch into Wyoming and there using it, contrary to the rights of a prior appropriator in Wyoming, since the locus of the injury is in Wyoming, where the water is used. The court declines to decide whether it has power to determine the priority of rights of Montana appropriators on this stream, but the case of *Conant* v. *Deep Creek Co.* cited above is authority against such power.

MUNICIPAL CORPORATIONS—RIGHT OF CORPORATOR TO EXAMINE BOOKS. —The city of Memphis was in such bad condition financially that the mayor called a meeting of citizens to consider ways and means of improving the streets. The relator in this case was a citizen and taxpayer and demanded the right to make a thorough examination of the books of the corporation with the aid of an expert in order to ascertain the true financial condition of the city. He was refused by the mayor and brings mandamus to enforce his right. *Held*, that every corporator of a municipal corporation, has a right to examine all records, books and other documents of the corporation on all proper occasions. The enforcement of the right by mandamus lies in the sound discretion of the court. Political hostility on the part of the corporator to the existing administration is not sufficient ground for refusal; neither is the fact that the investigation would require several months and would involve inconvenience and worry to the officers in charge of the books; nor is the fact that subsequent to the commencing of suit, an investigation had been begun by a committee of citizens appointed by the leglislative council in accordance with an ordinance. *State ex rel. Wellford* v. *Williams, Mayor* (1903), — Tenn. — 75 S W. Rep. 948.

That a member of a municipal corporation has a right to inspect its records when he has a private or personal interest in such documents, or in the information to be derived therefrom, is well established. But the doctrine of this case goes much further and extends the right to any citizen, though his interest be no greater than that of any other citizen, and though his purpose be simply to satisfy himself that the officers of the municipality have properly